IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7295 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RANG COOPERATIVE HOUSING SOCEITY

Versus

STATE OF GUJARAT

Appearance:

MR DD VYAS for Petitioner

Mr. I.M. Pandya, AGP for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/10/2000

ORAL JUDGEMENT

Learned advocate Mr. Panchal is appearing for Mr. Vyas for the petitioner. Learned AGP Mr. I.M.Pandya is appearing for the respondents. This petition was admitted by this Court on 1.12.1989. In

this petition, the petitioner has challenged the order passed by the Gujarat Land Revenue Tribunal in revision application no. 103 of 1984 dated 21st November, 1984 (Annexure "E").

The petitioner is a housing cooperative society meant for constructing houses for the lower middle class persons who has filed the present petition through its President. The petitioner society had, by a registered document dated 13.12.1982, purchased the land admeasuring 23 gunthas of the land out of survey no. 76 in consideration of Rs.48,800/- and prior to the execution of the said document, an application was made on 16.4.1982 to the deputy collector Navsari for a permission to sell the land under section 63 of the Bombay Tenancy and Agricultural Lands Act which was granted by order dated 23.6.1982. Thereafter, on2.4.1983, the petitioner applied before the District Development Officer, Bulsar for permission to convert the said land for NA Use for constructing the houses for the purpose of the society which came to be granted by order dated 6th June, 1983. Thereafter, the petitioner made an application to the Gram Panchayat, Jamalpur for permission to make construction which came tobe granted by the gram panchayat by its resolution no. 8 dated 24.6.1983 and pursuant to that, amount of revenue cess and assessment as required against conversion of the use of the land was paid by the petitioner and, thereafter, pursuant to the permission given by the gram panchayat, petitioner started construction of the houses and by investing large amount, the construction work upto the plinth level was made. The respondent has filed the aforesaid revision application on or about July 4, 1984 challenging the order of the deputy collector dated 23.6.1982 which came to be allowed by the Gujarat Land Revenue Tribunal on 21.11.1984 and the order of the Deputy Collector was set aside. The review application filed against the said order of the tribunal by the petitioner which is still not disposed off by the tribunal. The petitioner has, therefore, approached this court challenging the said order dated 21.11.1984 annexure "E" to the petition.

Learned advocate Mr. Panchal appearing for the petitioner society has relied upon the decision of this court reported in 18 GLR page 700 in case of Gandhi Park Co-Op. Housing Society versus State of Gujarat wherein this court has observed that on plain reading of section 64A, it is evident that the provisions of section 63 and 64 of the Tenancy Act do not apply to the sells effected either by societies constituted under the Bombay

Cooperative Societies Act or in respect of the sales made in favour of such societies. This court has further observed that the Gujarat Revenue Tribunal, however, on misreading of section 64A, accepted the distorted interpretation and accepted the contention that what was exempted was the transaction of sale made under the Bombay Cooperative Societies Act. He has also relied upon rule 36 and has submitted that it is the power with the collector to grant permission subject to certain conditions and has submitted that the tribunal has committed error in reading rule 36 (1)(d) and section 64A and therefore, the order of the tribunal is required to be quashed and set aside.

Learned AGP Mr. Pandya appearing for the respondent authorities has submitted that the tribunal was right in passing the order impugned herein and no error has been committed by the tribunal in interpreting the provisions of section 64A and rule 36. Learned AGP Mr. Pandya has also submitted that section 64A has been deleted by statutory provisions by Gujarat Act 21 of 1987 and, therefore, the principles laid down by this court in decision reported in 18 GLR page 700 will not be applicable to the present case.

I have considered the submissions made by the learned advocates for the parties. I have also considered the averments made in this petition. I have also considered the principles laid down by this court in the decision reported in 18 GLR page 700. The present petition is covered by the principles laid down by this court in the said decision.

Therefore, considering the facts and circumstances of the present case and also considering the law laid down in this regard by this court in 18 GLR 700, as per my view, the view taken by the tribunal is erroneous and the error is apparent on the face of the record. The submission of Mr. Pandya that in view of deletion of the provisions of section 64A, the law laid down by this court in 18 GLR 700 will not apply to the facts of the present case cannot be accepted only on the ground that the transaction in respect of the present case is dated 13.12.1982. The permission was granted by the Deputy Collector on 23.6.82 i.e. prior to 1987 meaning thereby,prior to relevant deletion of section 64A from the Statute Book. Thus, when the permission was granted by the Deputy COllector, the provisions of section 64A were very much there in the Statute Book. Further, it is not the case of the respondents that the amendment was retrospective. Therefore, such submision

cannot be accepted. Same is, therefore, rejected.

Accordingly, this petition is allowed. Impugned order dated 21.11.1984 passed by the tribunal which is at page 38, Annexure "E" to the petition is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

6.10.2000. (H.K. Rathod,J.)

Vyas